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No. 82-1613

In the Supreme Court of the United States

OCTOBER TERM, 1982

HELMERICH & PAYNE, INC.
Petitioner

v.

ROCK ISLAND IMPROVEMENT COMPANY
Respondent

v.

SAM SEXTON, JR.
Third Party Defendant

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PRELIMINARY MATTERS

Respondent does not take issue with the following portions of Petitioner's Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit: Questions Presented, Parties to the Proceeding Below, Opinions Below, Jurisdictional Basis of Petition for Writ of Certiorari and Basis of Federal Jurisdiction.

STATUTORY PROVISIONS INVOLVED

The pertinent provision of the 1967 Open Cut Land Reclamation Act, 1967 Okla. Sess. Laws, Chapter 186, is quoted verbatim in Respondent's brief at page 2.

The 1971 Oklahoma Mining Land Reclamation Act, 45 O.S.(1971), §721-§738 is set out in Appendix E to Petitioner's Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit.

Section 1201(c) of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C.S., §1201(c), is quoted verbatim in Respondent's brief at page 3.

The "Coal Reclamation Act of 1979", 45 O.S. §742.1, *et seq.*, is set out in Appendix B hereto.

STATEMENT OF FACTS

Prior to 1967, the State of Oklahoma had no stated policy concerning land reclamation after mining operations. In 1967 the Oklahoma Legislature enacted the Open Cut Land Reclamation Act, 1967 Okla. Sess. Laws, Chapter 186. The policy of the State of Oklahoma was enunciated at 45 O.S.(1967), §702, to be as follows:

> It is hereby declared to be the policy of this state to provide, after mining operations are completed, for the reclamation and conservation of land subjected to surface disturbance by open cut mining and thereby to preserve natural resources, to aid in the protection of wildlife and aquatic resources, to establish recreational, home and industrial sites, to protect and perpetuate the taxable value of property, and to protect and promote the health, safety and general welfare of the people of this state.

A new and more stringent act was passed in 1971. Similar to the 1967 Act, 45 O.S.(1971), §722 provided:

> It is hereby declared to be the policy of this state to provide for the reclamation and conservation of land subject to surface disturbances by mining and thereby to preserve natural resources, to encourage the productive use of such lands after mining, to aid in the protection of wildlife and aquatic resources, to encourage the planting of trees, grasses and other vegetation, to establish recreational, home and industrial sites, to protect and perpetuate the taxable value of property, to aid in the prevention of erosion, landslides, floods and the pollution of waters and air, to protect the natural beauty and aesthetic values in the affected areas of this state, and to protect and promote the health, safety, and general welfare of the people of this state.

In 1968 hearings on proposed legislation regulating surface coal mining began in the United States Senate. (Surface Mining Reclamation: Hearings before the Senate Committee on Interior and Insular Affairs, 90th Cong.2d Sess. (1968).) After six years of thorough legislative consideration including extended hearings about the effect of surface mining on our national's environment and economy, Congress passed the Surface Mining Control and Reclamation Act of 1977 (Surface Mining Act or Acts) 91 Stat. 447, 30 U.S.C. §1201, *et seq.* (1976 Ed. Supp. III) [30 U.S.C.S. §1201, *et seq.*]). For a concise report of the legislative history of the Act, see *Hodell* v. *Virginia Surface Min. and Recl. Assoc.*, 452 U.S. 264, 278 n.19 (1981).

The effects of surface coal mining upon this country and its inhabitants are set out in the Act at 30 U.S.C. §1201 (c) which states:

(c) Many surface mining operations result in disturbances of surface area that burden and adversely affect commerce and the public welfare by destroying or diminishing the utility of land for commercial, industrial, residential, recreational, agricultural and forestry purposes, by causing erosion and landslides, by contributing to floods, by polluting the water, by destroying fish and wildlife habitat, by impairing natural beauty, by damaging the property of citizens, by creating hazards dangerous to life and property by degrading the quality of life in local communities, and by counteracting governmental programs in efforts to conserve soil, water, and other natural resources.

The Oklahoma Legislature continued to pass more stringent laws with respect to the reclamation of lands affected by surface coal mining operations and passed the "Coal Reclamation Act of 1979" to bring Oklahoma into compliance with Public Law 95-87, the "Surface Mining Control and Reclamation Act of 1977," supra.

From April 8, 1968, through July 31, 1977, Respondent, Rock Island Improvement Company, leased land in Oklahoma to Petitioner, Helmerich & Payne, Inc., for the purpose of coal mining. Two of the sites included in the lease are the subject of this lawsuit. The lease contained a reclamation provision which provided in pertinent part at paragraph three:

"Upon the abandonment or completion of any mining operation, or part thereof, including but not limited to any strip operation, the surface shall be restored as nearly as possible to its condition prior to said mining operation . . . such . . . restoration shall be at the sole expense of the Lessee."

The lease also provided at paragraph fourteen that:

> "As part of the consideration for this lease, Lessee covenants and agrees to comply with all mining laws and regulations of the State of Oklahoma and the United States which regulate or control the mining of coal from the premises here leased . . ." (Lease, Appendix A hereto)

Petitioner did not mine the property itself, but in 1974 subleased the property to Sam Sexton, Jr., Third Party Defendant (R. Vol. III, page 58).

The lease terminated and Sam Sexton, Jr. and Petitioner abandoned the strip pits without reclaiming the land. Thereafter Respondent requested that Petitioner abide by its agreement to restore the land. Petitioner refused, and this lawsuit ensued (R. Vol. V, page 34).

The diversity jurisdiction of the federal court was invoked, and the case was tried in the United States District Court for the Eastern District of Oklahoma to the Honorable Frank H. Seay and to a jury.

The undisputed testimony at the trial was that it would cost $375,000.00 to restore the land to its condition prior to the mining operation (R. Vol. VI, page 111).

The Assistant State Mine Inspector testified that this land would probably never be mined again because of federal environmental restrictions (R. Vol. VI, pages 94-95). He also testified that the land should be reclaimed by backfilling, grading, leveling, redistributing the topsoil, planting vegetation, and filling the pit (R. Vol. VI, page 30).

Six different mining applications filed by Petitioner's Sublessee, Sam Sexton, Jr., indicated that the land was to be reclaimed. The reclamation included the filling of the open pit (R. Vol. III, pages 1-30, 58).

Mr. Bruce Clenton, a representative of Respondent, testified that Respondent wanted to reclaim the land because of (1) the hazard which the property represents in the community, (2) the potential liability of Respondent for accidents which are likely to occur there, (3) the aesthetic considerations in not wanting open scars on the landscape and a blight in the community, and (4) the pressure being exerted upon Respondent by state officials, former governor David Boren, representatives of the community, civic clubs, and others (R. Vol. V, page 32).

The State Mine Inspector testified to the ultra-hazardous condition of the property exemplified by two open pits and by sheer dropoffs (R. Vol. VI, page 32).

The jury awarded Respondent $375,000.00, the cost of reclaiming the land. (Jury Verdict of U. S. District Court for the Eastern District of Oklahoma, filed November 12, 1980, Appendix C to Petitioner's Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit.)

After Petitioner's Motion for Judgment Notwithstanding the Verdict, Motion to Amend Judgment, and Motion for New Trial were denied, Petitioner appealed to the United States Court of Appeals for the Tenth Circuit and the jury verdict of $375,000.00 was affirmed by that court subject to the modification of $50,000.00 credited to Petitioner as stipulated by the parties. (*Rock Island Improve-*

ment Company v. *Helmerich & Payne, Inc.* v. *Sam Sexton, Jr.*, ... F.2d ....., No. 81-1080 (10th Cir. 1983), Appendix A to Petitioner's Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit.)

Petitioner filed a Petition for Rehearing, Suggestion for Rehearing En Banc, and Motion to Certify Question to the Oklahoma Supreme Court, which was denied on February 23, 1983 (Appendix B to Petitioner's Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit).

Petitioner has filed its Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit asking this Court to decide whether Respondent can recover $375,000.00 for reclamation of the land as the District Court jury and the Tenth Circuit Court of Appeals found when the total market value of the land is only $76,345.00, and whether the measure of damages question should be certified to the Oklahoma Supreme Court (Questions Presented, p. i, Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit).

REASONS FOR DENYING THE WRIT

I.

THERE ARE NO SPECIAL OR IMPORTANT REASONS FOR THIS COURT TO EXERCISE ITS DISCRETION TO GRANT CERTIORARI.

To warrant the exercise of this Court's discretion to grant certiorari, questions must be of such gravity and importance to the nation as a whole as to require the review of the conclusions of the Circuit Court of Appeals in reference to them. *In re Woods*, 143 U.S. 202 (1892).

In the case of *In re Woods*, supra, this Court declined to consider a mere question of state law. There the inquiry was whether it was settled state law in the State of Minnesota that a judgment of dismissal in a former suit was not a bar to a second suit upon the same cause of action. This Court declined to grant certiorari on this question. In our case Petitioner states that "the principal issue in this controversy is the measure of damages suffered by a lessor of coal deposits upon the failure of the lessee to perform fully a reclamation provision of the lease subsequent to surface mining." This issue is clearly a question of Oklahoma law turning entirely on the facts of this case.

Petitioner seeks reversal of the Opinion of the Tenth Circuit Court of Appeals holding that under the contract between the parties, construed in the light of federal and state policy and statutes governing reclamation of land which has been strip mined, the cost of reclamation is a proper measure of damages under Oklahoma law.

In contending that damages should be limited to diminution in the value of the land, Petitioner relies upon a

case decided by the Oklahoma Supreme Court in 1963 before the state and federal legislation with respect to surface mining control and surface reclamation was passed, *Peevyhouse* v. *Garland Coal and Mining Co.*, 382 P.2d 109 (Okla.), *cert. den.*, 375 U.S. 906 (1963). In *Peevyhouse* the Oklahoma Supreme Court examined a coal mining lease requiring the lessee to reclaim any land it strip mined. At issue was whether the proper damages for the lessee's failure to reclaim was the cost of performance or the diminution of fair market value of the land. The court held that the proper measure of damages was the reasonable cost of reclamation, unless the reclamation requirement was incidental to the lease's main purpose and the cost of reclamation would be grossly disproportionate to the diminution in the land's fair market value. In that case, the lessor's damages were limited to the diminution in value. *Id.* at 114.

Relying upon Petitioner's contention that *Peevyhouse* is still the law in Oklahoma despite the passage of the state and federal statutes, the trial court in this case submitted the issue of the reclamation clause's importance to the jury. The jury found in favor of Respondent and Petitioner appealed on the ground that the trial court should have held that the lease unambiguously focused upon coal mining as its main purpose and that reclamation was merely an incidental purpose. Petitioner further contended that the court should have held that the cost of reclamation was disproportionate to the diminution in land value. The Tenth Circuit Court of Appeals was convinced that the Oklahoma Supreme Court would no longer apply the rule that it established in *Peevyhouse* in 1963 if it had the facts of this case before it. The court held that where there is a statutory

duty to reclaim land which has been strip mined and where the parties to the contract expressly include a reclamation clause which requires the lessee to bear the cost of reclamation, the cost of performance of the reclamation is the proper measure of damages for breach of the reclamation provision of a coal mining lease in Oklahoma. The Tenth Circuit upheld the jury's verdict of $375,000.00 subject to the modification of $50,000.00 credited to Petitioner as stipulated by the parties.

The question of the proper measure of damages in this case under Oklahoma law not only lacks overall national importance, but the question is not likely to be repeated due to the passage of more comprehensive state and federal legislation regulating the reclamation of land subjected to surface mining. The present law provides that if reclamation is not feasible, surface mining operations should not be conducted. 45 O.S.(1981), §742.1 states in pertinent part as follows:

> It is the purpose of this act to protect the rights of surface owners and the environment, and to require reclamation of lands affected by surface and underground coal mining in a manner compatible with the social, environmental and aesthetic needs of this state. *If reclamation is not feasible, surface mining operations should not be conducted* . . . (Emphasis added)

Under this law no one could claim that reclamation was "incidental to the main purpose of the contract" or that "the cost of reclamation was disproportionate to the diminution in land value." Either the land would be reclaimed, or the mining operations would not be conducted. For this reason, the factual situation present under this contract will

not recur and the decision appealed from is without impact outside the limits of this case.

Petitioner asks this Court to certify a question of law to the Oklahoma Supreme Court pursuant to the Uniform Certification of Questions of Law Act, 20 O.S.(1981), §1602. Petitioner did not ask the trial court to certify the question and Petitioner did not ask the Tenth Circuit Court of Appeals to certify the question until after its decision was rendered.

This is not a case where the Appellate Court felt that Oklahoma law was unclear. This is a case where the Appellate court was convinced that the law had changed. The court stated, "We are convinced that the Oklahoma Supreme Court would no longer apply the rule it established in *Peevyhouse* in 1963 if it had the instant dispute before it" (Appendix to Petition for Certiorari to the United States Court of Appeals for the Tenth Circuit, page 6(a)). The decision of the Tenth Circuit Court of Appeals to deny Petitioner's belated Motion to Certify on February 23, 1983, was correct. This Court should decline to grant certiorari to certify a question to the Oklahoma Supreme Court where the issue of Certification was not timely raised in the courts below and where the question lacks national significance.

II.

FACTUAL QUESTIONS HAVE BEEN RESOLVED TWICE IN FAVOR OF RESPONDENT AND THE SUPREME COURT DOES NOT GRANT CERTIORARI TO REVIEW EVIDENCE AND DISCUSS SPECIFIC FACTS.

In this case the jury has made a factual determination that the reclamation clause was not incidental to the main purpose of the contract and/or the cost of reclamation was not disproportionate to the diminution in land value. The Tenth Circuit Court of Appeals determined from the record that the reclamation clause was expressly bargained for and was intended by the parties to insure proper reclamation of the land. Petitioner asks this Court to review the facts and do what it has been unable to pursuade two previous courts to do — relieve it of its obligation to restore the land to its original condition. This Court has wisely ruled that, "We do not grant a certiorari to review evidence and discuss specific facts." *United States* v. *Johnson*, 268 U.S. 220, 227 (1925).

The Supreme Court is a court of law rather than a court for correction of errors and fact finding, and cannot undertake to review concurrent findings of fact by two courts below, in absence of a very obvious and exceptional showing of error, *Grover Tank & Mfg. Co.* v. *Linde Air Products Co.*, 336 U.S. 271, adhered to in part and reversed in part 339 U.S. 605, motion denied 70 S.Ct. 1017, 94 L.Ed. 1392.

No such showing is made here. Petitioners are not entitled to a third bite of the same apple, and resolution by the Supreme Court of the question presented is unnecessary.

III.

THIS CASE DOES NOT IN ANY SENSE BROADLY CONCERN THE RELATIONSHIP BETWEEN THE FEDERAL COURT SITTING IN DIVERSITY AND THE STATE COURTS.

Petitioner contends that the trial court correctly instructed the jury that *Peevyhouse*, supra, accurately stated the law of Oklahoma (Page 8 of Petitioner's Petition for Certiorari). The jury was instructed under Petitioner's view of Oklahoma law.

The Tenth Circuit Court of Appeals held that although the trial court should not have submitted the issue of the reclamation clause's importance to the jury, to do so was harmless error since the cost of performance is the proper measure of damages under current Oklahoma law and the jury used this measure in calculating damages. This Court must necessarily depend on District Courts and Courts of Appeal for initial determinations of questions of state law and its practice of deference to such determinations should generally render unnecessary review in such respect. *Court* v. *Ash*, 422 U.S. 66 (1975).

The opinion of the Court of Appeals does not cast aside all authority in determining, for the State of Oklahoma, what its law with respect to damages shall be, and the Court of Appeals has not usurped the right and duty of the Oklahoma courts by rejecting *Peevyhouse*, supra, as Petitioner contends. Instead, the Honorable James K. Logan correctly recognizes that although he and his fellow judges, the Honorable Monroe G. McKay and the Honorable James E. Barrett, are bound by decisions of the State Supreme Court in diversity cases, they need not adhere to a decision

if they think it no longer would be followed (Opinion of the United States Court of Appeals Tenth Circuit, Appendix to Petitioner's Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit, page 6(a)).

This Court has recognized an exception to slavish adherence to state court decisions where it can be said with some assurance that the state supreme court will not follow the decision in the future and where the federal court is convinced by other persuasive data that the highest court of the state would decide otherwise. *West* v. *American Telephone & Telegraph Co.*, 311 U.S. 233 (1940); *Meredith* v. *Winterhaven*, 320 U.S. 228 (1943).

Some of the indicia recognized by this Court as affecting judicial rule are: confusion in state court decisions, a developing line of authorities that cast a shadow over the established ones, dicta, doubt or ambiguities in the opinion of state judges on the question and ". . . Legislative development that promises to undermine the judicial rule." *Bernhart* v. *Polygraphic Co. of America*, 350 U.S. 198, 205 (1955).

This Court has always affirmed the principle that a court is to apply the law in effect at the time it renders its decision, unless doing so would result in manifest injustice or there is statutory direction or legislative history to the contrary. *Bradley* v. *Richmond School Board*, 416 U.S. 696, 711 (1974).

In this case the Tenth Circuit Court of Appeals has considered legislation passed after the *Peevyhouse* decision which expresses a statutory duty to reclaim strip-mined

land and which makes no exception for cases in which the expenditures for reclamation are disproportionate to the resulting increase in the value of the land. By recognizing that the public policy of this State has changed as expressed in its statutes, the Appellate Court exercised its duty to ascertain from all the available data what the current state law is and to construe the contract between Petitioner and Respondent in the light of that legislation.

The holding of the Tenth Circuit Court of Appeals is in accord with other cases which have held that in light of the legislature's declaration that strip mining is generally hazardous to the public welfare and that it is unlawful to strip mine without a state permit, any contract or covenant pertaining to the performance of strip mining must be strictly construed.

Reed v. *Junutolo*, 42 S.E.2d 16 (W.Va. 1946), was a wrongful death action where the court found that the strip mining statute merited consideration in determining whether the excavation involved was a dangerous instrumentality. *West Virginia-Pittsburg Coal Co.* v. *Strong*, 42 S.E.2d 46 (W.Va. 1947), was a suit for declaratory judgment by the owner of mineral and coal rights in a certain parcel of land against the owners of the remaining freehold; they sought a declaration that their mineral rights included the right to strip mine. The court held that in the light of the legislature's declaration that strip mining is generally hazardous to the public welfare and that it is unlawful to strip mine without a state permit, any contract or covenant pertaining to performance of strip mining must be strictly construed.

The Tenth Circuit Court of Appeals did not abandon the elementary principles of damages as Petitioner contends. With respect to Title 23, Okla. Stat. Ann., §96, §97, which Petitioner contends limit the amount of its damages, the Tenth Circuit Court of Appeals found that because the anticipated cost of reclamation may have affected the contract price, these statutes do not preclude the cost of performance as the measure of damages (Opinion, United States Court of Appeals, Tenth Circuit, Appendix A to Petitioner's Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit, page 7(a)).

CONCLUSION

The decision in this case is fully in accord with other cases. The result is fair. The Petitioner promised to restore the surface as nearly as possible to the condition it was in prior to the mining operation, but failed to do so. The property now represents a hazard and an eyesore to the community, and Respondent is potentially liable for the ultra-hazardous condition which now exists as a result of the operation of Petitioner's agent. It is fair and just that the party who contracted to bear the cost of restoration be required to pay the reclamation costs. The award of the cost of reclamation is not a windfall recovery because it is essential that the land be restored to a safe condition. The Tenth Circuit Court of Appeals, in affirming the jury's award of $375,000.00 (subject to the $50,000.00 credit), did not so far depart from the accepted and usual course of judicial proceedings as to call for an exercise of the Court's power of supervision. Respondent respectfully

requests that Petitioner's Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, JOHN R. CAIN, have made application for admission to practice as a member of the Bar of the Supreme Court of the United States. I am Counsel of Record for Rock Island Improvement Company, Respondent herein, and I hereby certify that on the ..... day of ....., 1983, pursuant to Rule 28 of the Rules of the Supreme Court, I served three (3) copies of the foregoing Brief in Opposition to Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit on each of the parties required to be served herein as follows: On Helmerich & Payne, Inc., the Petitioner, by mailing the copies in a duly addressed envelope with first-class postage prepaid, to JAMES R. EAGLETON, Counsel of Record for Helmerich & Payne, Inc., at his office at 3200 University Tower, 1722 South Carson, P.O. Box 2967, Tulsa, Oklahoma 74101; and, on SAM SEXTON, JR., Third Party Defendant herein, by mailing the copies in a duly addressed envelope, with first-class postage prepaid to Sam Sexton, Jr., appearing *pro se* at his office at P.O. Box 1526, Fort Smith, Arkansas 72902.

All parties required to be served have been served.

JOHN R. CAIN
Counsel for Respondent

APPENDIX A

[Lease Between Respondent, Rock Island Improvement Company and Petitioner, Helmerich & Payne, Inc.]

LEASE OF COAL DEPOSITS

THIS AGREEMENT, made and entered into this 8th day of April, 1968, by and between the ROCK ISLAND IMPROVEMENT COMPANY, a New Jersey corporation, hereinafter designated as "Lessor", and HELMERICH & PAYNE, INC., a Delaware corporation, hereinafter designated as "Lessee".

WITNESSETH

That for and in consideration of Five Thousand Two Hundred Four Dollars and ninety-three cents ($5,204.93) paid to Lessor by Lessee, the receipt of which is hereby acknowledged, and in consideration of the covenants and agreements herein set out to be kept and performed by both of the parties, the parties hereto have agreed, and do hereby covenant each with the other as follows, to-wit:

(1) Lessor does hereby grant, demise, lease and let unto Lessee all coal and coal deposits lying in and under the lands described in Schedule "A" attached hereto and made a part of this lease, and located in the respective counties therein set out, within the State of Oklahoma.

(2) Said premises are hereby leased, let and demised unto Lessee for the purpose of removing, extracting, mining and recovering coal and coal deposits in, upon, or underlying the lands described in Schedule "A". That said mining for coal may be by standard methods commonly known as strip and/or surface mining, and by slope and shaft, known as subterranean and/or underground operations.

(3) Lessor hereby conveys to Lessee only the right to use any of the surface overlying said leased coal and coal deposits owned by it, and such right shall be subject to any present outstanding surface lease. Any use of the surface

by the Lessee for said mining operation must be reasonable for that purpose, and may include the erecting of works, buildings, plants, structures and appliances necessary and reasonable for said mining purposes. Upon the abandonment or completion of any mining operation, or part thereof, including but not limited to any strip operation, the surface shall be restored as nearly as possible to its condition prior to said mining operation, including the removal of any and all such works, building, plants, structures and appliances placed thereon for said mining operation. Such removal and restoration shall be at the sole expense of the Lessee. Lessee, in addition thereto, shall pay any and all damages to any and all surface interests, whether leasehold owners or surface owners, resulting in the loss and damage to any and all property, including but not limited to growing crops and livestock of the surface owner or lessee.

(4) Lessor reserves the right to dispose of any or all of the surface of the leased lands of Schedule "A" provided, however, that the sale of the surface does not interfere with the reasonable use of the surface by the Lessee for said mining operation.

(5) In all strip mining operations on said leased lands Lessee shall maintain gaps or plugs, as they are commonly called, of 600 feet where it would be desirable to, in the future, sink a shaft in order to reach or recover the deep coal that cannot be mined by the strip mining methods.

(6) This lease agreement is subject to all flowage easements and subordination agreements granted to the United States of America in connection with the operation and maintenance of the Eufaula Reservoir of the Canadian River and is further subject to all zoning ordinances and restrictions, existing easements for public roads, streets, highways, public utilities, railroads and pipelines, whether appearing of record or not, but which, in fact, now exist on, over, under or across said land.

(7) Lessee takes this lease and any rights thereunder subject to any oil and gas leasehold estates heretofore granted by this Lessor, and agrees, at Lessee's sole cost and expense, to assume any and all liability for damage to said oil and gas leasehold estate, and for the loss and damage to any and all property, or to the rights of any owner of the oil and gas leasehold estate which might have heretofore been granted by this Lessor.

(8) This lease shall become effective upon its execution and delivery by Lessor, and continue in effect for a term of nine (9) years, provided the annual minimum advance payments hereinafter specified are paid by the Lessee.

(9) Lessee shall pay to Lessor as royalty (hereinafter called tonnage royalty) on each net ton of 2,000 pounds of coal mined and taken from the demised deposit the sum of 25¢ if removed by strip mining operation, and 15¢ if removed by an operation other than strip mining. Said tonnage to be determined by scale weights, with the scale so used to be approved by the Lessor. Lessee to furnish Lessor a sworn report each month showing the true number of tons of coal so mined from the leased property and the method used. The Lessee shall keep true and correct records pertaining to all coal removed from the demised deposit, and the Lessor shall have the right at all reasonable times to inspect said records, including the scale weights. Tonnage royalty on coal mined, removed and sold during any calendar month shall be paid to Lessor on or before the last day of the next succeeding calendar month.

(10) The sum of money first set out as consideration for this lease shall be considered as a minimum advance payment of royalty for the first year this lease is in effect, and Lessee shall have the right to credit and apply the amount so paid against royalties payable for coal mined during the first year of the term of this lease.

(11) Lessee shall pay to the Lessor as a minimum annual advance payment of royalty the sum of $1.00 per acre

of real property covered by said coal lease, in advance, beginning on the next anniversary date of this lease, and payable on each anniversary date thereafter during the term of this lease. Said minimum annual payment shall be credited and treated as minimum advance royalty, and Lessee shall have the right to credit or apply amounts so paid against royalties payable for coal mined during the ensuing year, for which the minimum annual advance payment of tonnage royalty has been paid.

(12) Lessor shall pay and discharge before delinquency, all property taxes, special assessments and levies of whatever nature or kind which may be taxed, charged or assesed against the said land and subsequent to payment of said taxes, special assessment and levies, Lessee shall reimburse the Lessor upon receiving a bill therefor. Lessee shall pay before delinquency all taxes, assessments, license fees or other charges that may be levied or assessed upon all buildings, machinery, structures, fixtures and other improvements placed on the leased premises by Lessee.

(13) Lessee shall have the right to surrender this lease as to the lands described in Schedule "A", or any part thereof, without the payment of any additional consideration for such privilege, by giving notice in writing to the Lessor of such surrender 30 days prior to the effective date, and after the effective date of the notice of surrender Lessee shall thereupon be released from any future advance payment of royalty as to the acreage, or that part of said land so surrendered and released, as herein provided. After the effective date of the surrender, Lessee shall have no right to remove or mine any additional coal from the released lands or acreage, and shall not be entitled to receive back any part of any advance royalty paid for the acreage so released prior to the effective date of surrender.

(14) As a part of the consideration for this lease, Lessee covenants and agrees to comply with all mining laws and regulations of the State of Oklahoma and the United

States which regulate or control the mining of coal from the premises here leased, and Lessee further agrees to comply with the provisions of the Workmen's Compensation Act of the State of Oklahoma, and hereby agrees to protect, save harmless and indemnify Lessor from any claim for damages, personal injury or death which may occur to any person, or persons, in conjunction with, or connected to, the operation of any mine of any kind opened or operated upon the premises here involved under this lease.

(15) Lessee agrees, as a part of the consideration to the Lessor for entering into this agreement, to make, execute and deliver to Lessor a bond in the penal sum of $25,000.00 to bind the Lessee for full and faithful performance of each and all of Lessee's undertakings in this agreement contained and for the indemnity of the Lessor for all loss and damage as herein specified, and for its indemnity against the failure of Lessee to comply with any statute, ordinance, or other governmental regulation applicable to the operation covered by this lease, whether with respect to the accrual of liens thereon or compliance with the Employer's Liability or Workmen's Compensation Act, or relating to mining operations, Miners' Payroll Lien Law, or with respect to any other matter affecting said operations, and said bond shall continue in force and effect, until the statutory limitation shall have run against every cause of action or liability which the Lessee has in this agreement assumed.

(16) In the event Lessor, at any time, considers that Lessee is in default or has failed to make any money payment due hereunder, Lessor shall give to the Lessee written notice of such alleged failure or default, and in the event Lessee shall not, within 30 days thereafter, make payments of any amount due, or shall not have entered upon the correction of any other default, Lessor may, at its option, terminate the unexpired portion of this agreement by notifying Lessee of such election in writing.

(17) Upon the termination of this lease, whether by lapse of time or by forfeiture or surrender, Lessee shall have a reasonable time thereafter, and not more than 60 days, within which to remove through, from and under said leased premises, all machinery, equipment and personal property heretofore installed by it on the leased premises, and to make the removals and restorations heretofore provided for in this lease.

(18) This lease may not be assigned in whole or in part by the Lessee without the written permission of the Lessor.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

ROCK ISLAND IMPROVEMENT COMPANY
By (s) *T. E. Desch*
Vice President

LESSOR

ATTEST:
(s) *P. A. Kasiurak*
Assistant Secretary

HELMERICH & PAYNE, INC.
By (s) *W. A. Black*
Vice-President

LESSEE

ATTEST:
(s) [signature illigible]
Assistant Secretary

[Notary Certification and Schedule "A" omitted]

APPENDIX B

45 O.S.(1981) §742.1, *et seq.*

THE COAL RECLAMATION ACT OF 1979

§ 742.1 *Short title — Intent of Legislature — Application of Act — Public policy — Purpose of act*

This act shall be known and may be cited as the "Coal Reclamation Act of 1979".

It is the intent of the Oklahoma Legislature that the Coal Reclamation Act of 1978, Sections 742 et seq. of Title 45 of the Oklahoma Statutes, and this Coal Reclamation Act of 1979, be read together as the law regulating the reclamation of lands affected by surface coal mining operations and the surface effects of underground coal mining, to bring Oklahoma into compliance with Public Law 95-87, the "Surface Mining Control and Reclamation Act of 1977".[1]

The provisions of the Mining Lands Reclamation Act, Sections 721 through 728 of Title 45 of the Oklahoma Statutes, shall not apply to surface coal mining operations or the surface effects of underground coal mining operations.

The Oklahoma Legislature finds and declares that coal mining operations presently contribute significantly to the nation's energy requirements, that Oklahoma's coal production is part of those energy requirements, and that the cooperative effort established by this act is necessary to prevent or mitigate adverse environmental effects of all surface mining operations.

It is the purpose of this act to protect the rights of surface owners and the environment, and to require reclamation of lands affected by surface and underground coal mining in a manner compatible with the social, environmental and aesthetic needs of this state. If reclamation is not feasible, surface mining operations should not be conducted. It is the intent of the Legislature to insure the existence of an expanding and economically healthy coal mining industry and that there be public participation in the development of rules and regulations appropriate to the State of Okla-

homa and that the Department of Mines exercise the full reach of its powers to insure the protection of the public interest through the effective control of surface mining operations.

§ 742.2 *Definitions*

As used in this act:

1. "Acid drainage" means water with a pH of less than 6.0 Standard Units and in which total acidity exceeds total alkalinity, discharged from active, inactive, or abandoned mines and from areas affected by surface coal mining and reclamation operations.

2. "Acid-forming materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, will result in the formation of acids that may create acid drainage.

3. "Adjacent area" means land located outside the affected area, permit area, or mine plan area, depending on the context in which "'adjacent area" is used, where air, surface or ground water, fish, wildlife, vegetation or other resources protected by this act may be adversely impacted by surface coal mining and reclamation operations.

4. "Affected area" means, with respect to surface mining activities, any land or water upon or in which those activities are conducted or located. With respect to underground mining activities, "affected area" means any water or surface land upon or in which those activities are conducted or located, and land or water which is located above underground mine workings.

5. "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined areas so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles and coal refuse piles eliminated. Water impoundments may be permitted where

the regulatory authority determines that they are in compliance with Section 21 of this act[1] and applicable rules and regulations.

6. "Aquifer" means a zone, stratum, or group of strata confined or unconfined, including perched conditions, that can store and transmit water in sufficient quantities for a specific use.

7. "Auger mining" means a method of mining coal at a cliff or highwall by drilling holes laterally into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface.

8. "Box cut" means the first open cut in strip mining which results in the placing of overburden on unmined land adjacent to the initial pit and outside the area to be mined.

9. "Coal exploration" means the gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical or other techniques necessary to determine the quality and quantity of overburden and coal of an area and the gathering of environmental data to establish the conditions of the area beginning before surface coal mining and reclamation operations.

10. "Coal processing plant" means a collection of facilities where run-of-the-mine coal is prepared for market by chemical or physical processing, and separated from its impurities. The processing plant may consist of, but not be limited to, the following support facilities: loading facilities; storage and stockpile facilities; shed, shops and other buildings; water treatment and water storage facilities; settling basins and impoundments; coal processing and other waste disposal areas; roads, railroads and other transport facilities; and utilities.

11. "Consolidated material" means material of sufficient hardness or ability to resist weathering and to inhibit erosion or sloughing.

12. "Department" means the office of the Chief Mine Inspector, including all employees, agents, deputies, and representatives of the Department, herein called the De-

partment of Mines and Mining, or such department, bureau or commission as may lawfully succeed to the powers and duties of such department, having primary responsibility for administering all titles of the Surface Mining Law.

13. "Director" means the Chief Mine Inspector of the State of Oklahoma or such officer, bureau or commission as may lawfully succeed to the powers and duties of such Chief Mine Inspector or such employee agent, deputy or representative of the Chief Mine Inspector as shall be designated by the Chief Mine Inspector to perform any actions required by this act.

14. "Disturbed area" means an area where vegetation, topsoil, or overburden is removed by surface coal mining operations or upon which topsoil, spoil, coal processing waste or noncoal waste is placed. Those areas are "disturbed" until reclamation of those areas is complete and the bond or other assurance of performance is released.

15. "Diversion" means a channel, embankment, or other manmade structure constructed for the purpose of diverting the flow of water from one area to another:

a. Permanent diversion means a diversion remaining after surface coal mining and reclamation are completed and which has been approved for retention by the Department and other appropriate state and federal agencies.

b. Temporary diversion means a diversion which is used during coal exploration or surface coal mining and reclamation operations, and not approved by the Department to remain after reclamation as part of the approved postmining land use.

16. "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of snow and ice, and which has a channel bottom that is always above the local water table.

17. "Ground water" means subsurface water that fills available openings in rock or soil materials such that they may be considered water-saturated.

18. "Head-of-hollow fill" means a fill structure consisting of any material, other than coal processing waste and organic material, placed in the uppermost reaches of a hollow where side slopes of the existing hollow measured at the steepest point are greater than twenty degrees (20°) or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than ten degrees (10°). In fills with less than two hundred fifty thousand (250,000) cubic yards of material, associated with contour mining, the top surface of the fill will be at the elevation of the coal seam. In all other head-of-hollow fills, the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill draining into the fill area.

19. "Highwall" means the face of exposed overburden and coal in an open cut of a surface or for entry to an underground coal mine.

20. "Hydrologic balance" means the relationship between the quality and quantity of inflow to, outflow from and storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the quantity and quality relationships between precipitation, runoff, evaporation, and the change in ground and surface water storage.

21. "Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate, and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form and falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

22. "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirements of this act in a surface coal mining and reclamation operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons out-

side the permit area before such condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would not expose oneself to the danger during the time necessary for abatement.

23. "Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

24. "In situ processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal, to include, but not be limited to, in situ gasification, in situ leaching, slurry mining, solution mining, bore hole mining and fluid recovery mining.

25. "Intermittent stream" means a stream or reach of a stream that drains a watershed of at least one (1) square mile, or a stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

26. "Operator" means any person, partnership, firm or corporation engaged in coal mining who removes or intends to remove more than two hundred fifty (250) tons from the earth within twelve (12) consecutive months in any one location.

27. "Other minerals" means clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substances of commercial value excavated in solid form from natural deposits on or in the earth, exclusive of coal and those minerals which occur naturally in liquid or gaseous form.

28. "Overburden" means all of the earth and other minerals, excluding topsoil, which lie above natural deposits of coal and other minerals, and also means such earth and other materials disturbed from their natural state in the process of surface mining.

29. "Peak" means an upward projecting point of overburden created in the surface mining process.

30. "Perennial stream" means a stream or part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface runoff.

31. "Performance bond" means the indemnity instrument in a sum certain, supported by a surety's guarantee, pledge of collateral or other acceptable contractual guarantee, by which the permit applicant assures faithful performance of all the applicable permit requirements of this act and the rules and regulations promulgated thereunder.

32. "Permit" means a permit to conduct surface coal mining and reclamation operations issued by the Department pursuant to state law.

33. "Permit area" means the area, including all natural and human resources, included within the boundaries specified in a permit, whether or not the areas will be impacted by surface coal mining and reclamation operations, which are designated on the approved maps submitted by the applicant with his permit application and covered by the performance and reclamation bonds as required.

34. "Permittees" means a person holding a "permit" to conduct surface coal mining and reclamation operations issued by the Department pursuant to state law.

35. "Pit" means a tract of land from which overburden or minerals have been or are being removed in the process of surface mining.

36. "Prime farmland" means lands which meet the criteria of the Department, which shall prescribe criteria at least as stringent as criteria prescribed by the United States Secretary of Agriculture on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, surface layer composition, susceptibility to flooding, and erosion characteristics, and which historically have been used for intensive agricultural purposes.

37. "Reclamation" means, through the process of backfilling, regrading, topsoil replacement, reutilization, and revegetation activities, the bringing back of land to its approximate original contours and configuration and resulting

in an equal or better land use category, and shall be consistent with the existing surrounding environment.

38. "Reference areas" means land units of varying size and shape identified and maintained under appropriate management for the purpose of measuring ground cover, productivity and species diversity that are produced naturally or by crop production methods approved by the Department. Reference areas must be representative of geology, soils, slope, aspect and vegetation in the permit area.

39. "Refuse" means all waste material directly connected with the production, cleaning or preparation of coal or other minerals which have been mined by either underground or surface mining method.

40. "Regulatory authority" means the Department of Mines and Mining.

41. "Ridge" means a lengthened elevation of overburden created in the surface mining process.

42. "Significant, imminent environmental harm to land, air or water resources" is determined as follows:

a. An environmental harm is any adverse impact on land, air, or water resources, including, but not limited to, plant and animal life,

b. An environmental harm is imminent if a condition, practice or violation exists which:

(1) is causing such harm or,

(2) may reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under Section 42 of this act.[2]

c. An environmental harm is significant if that harm is appreciable and not immediately reparable.

43. "Slope" means average inclination of a surface, measured from the horizontal; normally expressed as a unit of vertical distance to a given number of units of horizontal distance (e. g., one unit vertical (1v) to five units horizontal (5h) = 11.3 degrees).

44. "Soil horizons" means contrasting layers of soil lying one below the other, parallel or near parallel to the

land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The three (3) major soil horizons are:

a. "A horizon". The uppermost layer in the soil profile often called the surface soil. It is the part of the soil in which organic matter is most abundant and where leaching of soluble or suspended particles is the greatest.

b. "B horizon". The layer immediately beneath the A horizon and often called the subsoil. This middle layer commonly contains more clay, iron or aluminum than the A or C horizons, and

c. "C horizon". The deepest layer of the soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

45. "Spoil" means displaced overburden.

46. "Strip mining" means those mining operations carried out by removing the overburden lying above natural deposits of coal and other minerals, and mining directly from such natural deposits thereby exposed, but excludes auger mining, quarrying, dredging, pumping or the use of hydraulic methods.

47. "Substantially disturb" means, for purposes of coal exploration, to significantly impact upon land, air or water resources by such activities as blasting, mechanical excavation of land, drilling or altering coal or water exploratory holes or wells, construction or creation of roads and other access routes, and the placement of structures, excavated earth or other debris upon the surface of land.

48. "Surface coal mining and reclamation operations" means surface mining operations and all activities necessary and incident to the reclamation of such operations.

49. "Surface coal mining operations" means:

a. Activities conducted on the surface of lands in connection with a surface coal mine or surface operations and surface impacts incident to an underground coal mine. Such activities include excavation for the purpose of obtaining coal, includ-

ing such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the uses of explosives and blasting, in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal at or near the mine site. Such activities do not include the extraction of other minerals where coal does not exceed sixteen and two-thirds percent (16⅔%) of the tonnage of materials removed for the purposes of commercial use or sale or coal exploration, subject to Section 14 of this act,[3] and

b. The areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land, the use of which is incidental to any such activities, all lands affected by the construction of new roads or improvement or use of existing roads to gain access to the site of such activities and for haulage and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities.

50. "Surface water" means water, either flowing or standing, on the surface of the earth.

51. "Topsoil" means the "A" soil horizon, which is the uppermost layer of the three (3) major soil horizons.

52. "Underground mining activities" means a combination of:

a. Surface operations incident to underground extraction of coal or in situ processing, such as construction, use, maintenance, and reclamation of

roads, above-ground repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of waste, and areas on which materials incident to underground mining operations are placed, and

b. Underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities, in situ processing, and underground mining, hauling, storage, and blasting, and

c. The areas in which activities enumerated above occur or where such activities disturb the natural land surface.

53. "Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of this act due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the act due to indifference, lack of diligence, or lack of reasonable care.

54. "Water table" means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

§ 743. *Repealed by Laws 1979, c. 249, § 60, emerg. eff. June 1, 1979*

§ 744. *Application of act*

§ 745.1 *Permits for separate mining operations — Applications — Forms — Plan of reclamation — Fees — Exemptions*

A. It shall be unlawful for any operator to engage in any mining operations in this state without first obtaining from the Department a permit to do so for each separate mining operation. The Department shall determine what

constitutes a separate mining operation by rules and regulations promulgated under the Coal Reclamation Act.[1]

B. Any operator desiring to engage in surface mining eight (8) months after the approval of Oklahoma's regulatory program by the United States Secretary of the Interior shall make written application to the Department for a permit within two (2) months after the approval of the state program. Before the approval of the Oklahoma program by the Secretary of the Interior, the requirements of the Coal Reclamation Act of 1978 shall continue to apply to all permits for coal mining covered by the Coal Reclamation Act. Application for such permit shall be made upon a form furnished by the Department, which form shall require all pertinent information including, but not limited to, all information required by federal law and regulations.

C. Any operator desiring to engage in underground mining shall make written application to the Department for a permit within two (2) months after approval of the state program. Application for such permit shall be made upon a form furnished by the Department, which form shall require all pertinent information including, but not limited to, all information required by federal law and regulations for underground coal mining, taking into account the distinct differences between surface coal mining and underground coal mining.

D. Each application for a permit under subsections B and C of this section shall be accompanied by a plan for the reclamation of the affected land that meets the requirements of the Coal Reclamation Act.

E. Each application for a permit or permit renewal under subsections B and C of this section shall be accompanied by a fee of Five Hundred Dollars ($500.00) for each permit year, payable at the rate of Five Hundred Dollars ($500.00) per year on the anniversary date of the year in which the permit or permit renewal was issued. Such fee shall be deposited in the Department of Mines Revolving Fund and used to offset the cost of reviewing, administer-

ing and enforcing such permit issued pursuant to a state or federal program.

F. The provisions of the Coal Reclamation Act shall not apply to the extraction of coal by a landowner for his own noncommercial use from land owned or leased by him, or the extraction of coal as an incidental part of federal, state or local government-financed highway or other construction under regulations established by the Department.

§ 745.2 *Term of permit — Transferability*

All permits issued pursuant to the requirements of this act shall be issued for a term not to exceed five (5) years and are not transferable.

§ 745.3 *Termination of permit — Extension*

A permit shall terminate if the permittee has not commenced the surface coal mining operations covered by such permit within three (3) years of the issuance of the permit. The Department may grant reasonable extensions of time upon a showing and a finding by the Department that such extensions are necessary by reason of litigation precluding such commencement or threatening substantial economic loss to the permittee, or by reason of conditions beyond the control and without the fault or negligence of the permittee; provided, further that with respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee shall be deemed to have commenced surface mining operations at such time as the construction of the synthetic fuel or generating facility is initiated.

§ 745.4 *Renewal of permit — Application — Burden of proof — Term*

Any valid permit issued pursuant to this act shall carry with it the right of successive renewal with respect to areas within the boundaries of the existing permit. The holders of the permit may apply for renewal and such renewal shall be issued, provided that on application for renewal the burden shall be on the opponents of renewal, subsequent to

fulfillment of the public notice requirements of Sections 15 and 17 of this act[1] unless it is established that and written findings by the Department are made declaring:

1. The terms and conditions of the existing permit are not being satisfactorily met;

2. The present surface coal mining and reclamation operation is not in compliance with the environmental protection standards of this act and the state program;

3. The renewal requested substantially jeopardizes the operator's continuing responsibility on existing permit areas;

4. The operator has not provided evidence that the performance bond in effect for said operation will continue in full force and effect for any renewal requested in such application as well as any additional bond the Department might require; or

5. Any additional revised or updated information required by the Department has not been provided. Prior to the approval of any renewal of permit the Department shall provide notice to the appropriate public authorities.

If an application for renewal of a valid permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the application for renewal of a valid permit which addresses any new land areas shall be subject to the full standards applicable to new applications under this act.

Any permit renewal shall be for a term not to exceed the period of the original permit established by this act. Application for permit renewal shall be made at least one hundred twenty (120) days prior to the expiration of the valid permit.

§ 745.5 *Reclamation plan*

A. Each applicant for a permit shall be required to submit to the Department as part of the permit application a reclamation plan which shall meet the requirements of this act. Each reclamation plan submitted as part of a permit application shall include, in the degree of detail necessary to demonstrate that reclamation required can be accomplished, a statement of:

1. The identification of the lands subject to surface coal mining operations over the estimated life of those operations and the size, sequence and timing of the subareas for which it is anticipated that individual permits for mining will be sought;

2. The condition of the land to be covered by the permit prior to any mining including:

a. the uses existing at the time of the application, and, if the land has a history of previous mining, the uses which preceded any mining.

b. the capability of the land prior to any mining to support a variety of uses giving consideration to soil and foundation characteristics, topography, vegetative cover and, if applicable, a soil survey, and

c. the productivity of the land prior to mining, including appropriate classification as prime farmlands, as well as the average yield of food, fiber, forage or wood products from such lands obtained under high levels of management;

3. The use which is proposed to be made of the land following reclamation, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses and the relationship of such use to existing land use policies and plans, and the comments of any owner of the surface, state and local governments or agencies thereof which would have to initiate, implement, approve or authorize the proposed use of the land following reclamation;

4. A detailed description of how the proposed post-mining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

5. The engineering techniques proposed to be used in mining and reclamation and a description of the major equipment; a plan for the control of surface water drainage and of water accumulation; a plan, where appropriate,

for backfilling, soil stabilization, and compacting, grading and appropriate revegetation; a plan for soil reconstruction, replacement and stabilization; an estimate of the cost per acre of the reclamation, including a statement as to how the permittee plans to comply with each of the requirements of Oklahoma mining reclamation law;

6. The consideration which has been given to maximize the utilization and conservation of the solid fuel resource being recovered so that reaffecting the land in the future can be minimized;

7. A detailed estimated timetable for the accomplishment of each major step in the reclamation plan;

8. The consideration which has been given to making the surface mining and reclamation operations consistent with surface owner plans, and applicable state and local land use plans and programs;

9. The steps to be taken to comply with applicable air and water quality laws and regulations and any applicable health and safety standards;

10. The consideration which has been given to developing the reclamation plan in a manner consistent with local physical environmental, and climatological conditions;

11. All lands, interests in lands, or options on such interests held by the applicant or pending bids on interests in lands by the applicant, which lands are contiguous to the area to be covered by the permit;

12. The results of test boring which the applicant has made at the area to be covered by the permit, or other equivalent information and data, including the location of subsurface water, and an analysis of the chemical properties including acid-forming properties of the coal and other minerals and overburden. Information which pertains only to the analysis of the chemical and physical properties of the coal shall be kept confidential and not made a matter of public record. Information regarding mineral or elemental contents which are potentially toxic in the environment shall be a part of the public record;

13. A detailed description of the measures to be taken during the mining and reclamation process to assure the protection of:

a. the quality of surface and ground water systems, both on- and off-site, from adverse effects of the mining and reclamation process,
b. the rights of present users to such water, and
c. the quantity of surface and ground water systems, both on- and off-site, from adverse effects of the mining and reclamation process or to provide alternative sources of water where such protection of quantity cannot be assured; and

14. Such other requirements as the Department shall prescribe by regulations.

B. Any information required by this section which is not on public file pursuant to state law shall be held in confidence by the Department. Information which pertains only to the chemical and physical properties of the coal, except those properties which are potentially toxic in the environment, shall be kept confidential and not made a matter of public record.

§ 745.6 *Performance bond*

A. After a surface coal mining and reclamation permit application has been approved but before such a permit is issued, the applicant shall file with the Department, on a form prescribed and furnished by the Department, a bond for performance payable to the state, and conditional upon faithful performance of all the requirements of law and the permit. Such bond shall be signed by the operator as principal, and by a good and sufficient corporate surety licensed to do business in the state. The bond shall cover that area of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations within the initial term of the permit. Bonding will occur in one-year increments for the life of the permit and shall cover that segment of the permit area to be affected during the increment. As one-year increments

of surface coal mining and reclamation operations are to be initiated and conducted within the permit area, the permittee shall file with the Department an additional bond or bonds to cover such increments in accordance with this section.

B. The amount of the bond required for each bonded area shall depend upon the reclamation requirements of the approved permit, and shall reflect the probable difficulty of reclamation and giving consideration to such factors as topography, geology of the site, hydrology, and revegetation potential, and shall be determined by the Department. The amount of the bond for coal mining shall be sufficient to assure the completion of the reclamation plan if the work had to be performed by the Department in the event of forfeiture, and in no case shall the bond for the entire area under one permit be less than Ten Thousand Dollars ($10,000.00).

Liability under a surface coal mining bond shall be for the duration of the surface coal mining and reclamation operation and for a period coincident with the operator's responsibility for revegetation requirements. The bond shall be executed by the operator and a corporate surety licensed to do business in Oklahoma, except that the operator may elect to deposit cash, negotiable bonds of the United States Government, or of Oklahoma, negotiable certificates of deposit of any bank organized or transacting business in the United States, Certificates of Deposit or irrevocable letters of credit from a bank or lending institution licensed to do business in the State of Oklahoma. The cash deposit or market value of such securities shall be equal to or greater than the amount of the bond required for the bonded area.

C. A bond shall not be cancelable by the surety except after not less than ninety (90) days' prior written notice to the Department and the arrangement of a replacement bond suitable to the Department. Bonds may be continued in effect from year to year, and a new bond need not be provided for each permit year. The penalty of the bond or amount of cash and securities, as provided in sub-

section B of this section, shall be increased or reduced from time to time as affected land acreages are increased or decreased or when the cost of future reclamation changes.

D. If the license to do business in the state of any surety upon a bond filed with the Department pursuant to the Coal Reclamation Act[1] shall be suspended or revoked, the operator, within thirty (30) days after receiving notice thereof from the Department, shall substitute for such surety a good and sufficient corporate surety licensed to do business in the state. Upon failure of the operator to make substitution of surety as provided in this section, the Department shall have the right to suspend the permit of the operator to conduct operations upon the land described in such permit until such substitution has been made.

E. The Department may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the Department the existence of a suitable agent to receive service of process, and a history of financial solvency and continuous operation sufficient for authorization to self-insure or bond such amount.

F. Such bond or security shall remain in effect until the mined acres have been reclaimed, approved and released by the Department.

§ 745.7 *Grant, modification or denial of application for permit — Notice to applicant — Burden of proof — Notice to political subdivisions*

Upon the basis of a complete mining application and reclamation plan, including public notification and an opportunity for a public hearing, the Department shall grant, require modification of or deny the application for a permit in a reasonable time and notify the applicant in writing. The applicant for a permit, or revision of a permit, shall have the burden of establishing that his application is in compliance with all the requirements of the law. Within ten (10) days after the granting of a permit, the Department shall notify the local governmental officials in the political subdivision in which the area of land to be affected

is located that a permit has been issued and shall describe the location of the land.

§ 745.8 *Criteria for approval of permit or revision application*

No permit or revision application shall be approved unelss the application affirmatively demonstrates and the Department finds in writing, on the basis of the information set forth in the application or from information otherwise available, which will be documented in the approval and made available to the applicant, that:

1. The permit application is accurate and complete and that all the requirements of this act have been complied with;

2. The applicant has demonstrated that reclamation as required by this act can be accomplished under the reclamation plan contained in the permit application;

3. The assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance has been made by the Department and the proposed operation has been designed to prevent material damage to hydrologic balance outside the permit area;

4. The area proposed to be mined is not included within an area designated unsuitable for surface coal mining, or is not within an area under study for such designation unless the operator demonstrates he has made substantial legal and financial commitments to the operation prior to January 1, 1977; and

5. In cases when the private coal or other mineral estate has been severed from the private surface estate, the applicant has submitted to the Department:

   a. the written consent of the surface owner to the extraction of coal by surface mining methods, or
   b. a conveyance that expressly grants or reserves the right to extract the coal by surface mining methods.

If the conveyance does not expressly grant the right to extract coal by surface mining methods, the surface-

subsurface legal relationship shall be determined in accordance with state law. Nothing in this act shall be construed to authorize the Department to adjudicate property rights disputes.

§ 745.9 *Schedule of notices of violations of air or water environmental protection laws to be submitted — Effect of prior violations on application*

The applicant shall file with his permit application a schedule listing all notices of violations of this act and any law, rule or regulation of the United States, or of any department or agency in the United States, pertaining to air or water environmental protection incurred by the applicant in connection with any surface coal mining operation during the three-year period prior to the date of application. The schedule shall also indicate the final resolution of any such notice of violation. When the schedule or other information available to the Department indicates that any surface coal mining operation owned or controlled by the applicant is currently in violation of this act or such other laws referred to in this section, the permit shall not be issued until the applicant submits proof that such violation has been corrected or is in the process of being corrected to the satisfaction of the regulatory authority which has jurisdiction over such violation. No permit shall be issued to an applicant after a finding by the Department, after opportunity for hearing, that the applicant or the operator specified in the application controls or has controlled mining operations with a demonstrated pattern of willful violations of this act or the laws of another state or the United States regulating surface coal mining operations of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of this act.

§ 745.10 *Revision of permit*

A. 1. During the term of the permit the permittee may submit an application for a revision of the permit, together with a revised reclamation plan, to the Department.

2. An application for a revision of a permit shall not be approved unless the Department finds that reclamation as required by this act can be accomplished under the revised reclamation plan. The revision shall be approved or disapproved within a reasonable period of time. The Department shall establish guidelines for a determination of the scale or extent of a revision request for which all permit application information requirements and procedures, including notice and hearings, shall apply. Any revisions which propose significant alterations in the reclamation plan shall, at a minimum, be subject to notice and hearing requirements.

3. Any extensions to the area covered by the permit except incidental boundary revisions shall be made by application for another permit.

B. No transfer, assignment or sale of the rights under any permit issued pursuant to this act shall be made.

C. The Department shall, within a time limit prescribed in regulations, review outstanding permits and may require reasonable revision or modification of the permit provisions during the term of such permit. Such revision or modification shall be based upon a written finding and subject to notice and hearing requirements established by the Department.

§ 745.11 *Exploration regulations — Contents — Confidential or privileged information — Tonnage limitations — violations*

A. Coal exploration operations which substantially disturb the natural land surface shall be conducted in accordance with exploration regulations issued by the Department. Such regulations shall include, at a minimum:

1. The requirement that prior to conducting any exploration under this section, any person shall file with the Department notice of intention to explore, and such notice shall include a description of the exploration area and the period of supposed exploration; and

2. Provisions for reclamation, in accordance with the surface coal mining operations performance standards of this act, of all lands disturbed in exploration, including excavations, roads, drill holes and the removal of necessary facilities and equipment.

B. Information submitted to the Department pursuant to this subsection which is designated in writing as confidential, concerning trade secrets or privileged commercial or financial information which relates to the competitive rights of the person or entity intended to explore the described area, shall not be available for public examination.

C. No operator shall remove more than two hundred fifty (250) tons of coal pursuant to an exploration permit without the specific written approval of the Department.

D. Any person violating this section shall be subject to the penalty provisions of this act.

§ 745.12 *Advertisement of ownership, location and boundaries of affected land — Notice to political subdivisions, etc. — Comments on proposed operation*

At the time of submission of an application for a surface coal mining and reclamation permit, or revision of an existing permit, the applicant shall submit to the Department a copy of his advertisement of the ownership, precise location and boundaries of the land to be affected. At the time of submission such advertisement shall be placed by the applicant in a local newspaper of general circulation in the locality of the proposed surface mine at least once a week for four (4) consecutive weeks. The Department shall notify various local governmental bodies, planning agencies, sewage and water treatment authorities and water companies in the locality in which the proposed surface mining will take place notifying them of the operator's intention to surface mine a particularly described tract of land and indicating the application's permit number and where a copy of the proposed mining and reclamation plan may be inspected. These local bodies, agencies, authorities or com-

panies may submit written comments within a reasonable period established by the Department on the mining applications with respect to the effect of the proposed operation on the environment which are within their areas of responsibility. Such comments shall immediately be transmitted to the applicant by the Department and shall be made available to the public at the same location as are the mining applications.

§ 745.13 *Objections to application for permit — Informal Conference — Hearings*

A. Any person having an interest which is or may be adversely affected, or the chief administrative officer of any federal, state or local governmental agency or authority, shall have the right to file written objections to the application for a permit with the Department within thirty (30) days after the last publication of the notice. Such objections shall immediately be transmitted to the applicant by the Department and shall be made available to the public. If written objections are filed and an informal conference requested, the Department shall then hold an informal conference in the locality of the proposed mining. The date, time and location of such informal conference shall be advertised by the Department in a newspaper of general circulation in the locality at least two (2) weeks prior to the scheduled conference date. The Department may arrange with the applicant, upon request by any party to the application process, access to the proposed mining area for the purpose of gathering information relevant to the proceeding. An electronic or stenographic record shall be made of the conference proceeding, unless waived by all parties. Such record shall be maintained and shall be accessible to the parties until final release of the applicant's performance bond. In the event all parties requesting the informal conference stipulate agreement prior to the requested informal conference and withdraw their requests, such informal conference need not be held.

B. Where the lands included in an application for a permit are the subject of a federal coal lease in connection with which hearings were held and determinations were made under the Mineral Lands Leasing Act, as amended, 30 U.S.C. 201a, such hearings shall be deemed as to the matters covered to satisfy the requirements of this section and Section 17 of this act[1] and such determinations shall be deemed to be a part of the record and conclusive for purposes of this section and Section 17 of this act.

§ 745.14 *Findings — Notice to applicant — Hearing on findings*

A. If an informal conference has been held, the Department shall issue and furnish the applicant and persons who are parties to the administrative proceedings with the written finding of the Department, granting or denying the permit in whole or in part and stating the reasons therefor, within the sixty (60) days of the hearings in the informal conference.

B. If no informal conference has been held, the Department shall notify the applicant for a permit, within a reasonable time, whether the application has been approved or disapproved in whole or in part.

C. If the application is approved, the permit shall be issued. If the application is disapproved, specific reasons shall be set forth in the notification. Within thirty (30) days after the applicant is notified of the final decision of the Department on the permit application, the applicant or any person with an interest which is or may be adversely affected may request a hearing on the reasons for the final determination. The Department shall hold a hearing within thirty (30) days of such request and provide notification to all interested parties at the time that the applicant is so notified. Such hearing shall be of record, adjudicatory in nature and no person who presided at an informal conference shall either preside at the hearing or participate in this decision or in any administrative appeal. Within thirty (30) days after the hearing the Department shall issue and fur-

nish the applicant, and all persons who participated in the hearing, with the written decision of the Department granting or denying the permit in whole or in part and stating the reasons.

§ 745.15 *Temporary relief pending final determination of proceedings — Conduct of hearings — Appeals*

When a hearing is requested pursuant to this act, the Department may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceedings if:

1. All parties to the proceedings have been notified and given an opportunity to be heard on a request for temporary relief;

2. The person requesting such relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding; and

3. Such relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air or water resources.

For the purpose of this and every hearing authorized by this act, the Department may, pursuant to the Administrative Procedures Act,[1] administer oaths, subpoena witnesses, or written or printed materials, compel attendance of the witnesses, or production of the materials, and take evidence including, but not limited to, site inspections of the land to be affected and other surface coal mining operations carried on by the applicant in the general vicinity of the proposed operation. A verbatim record of each public hearing required by this act shall be made, and a transcript made available on the motion of any party or by order of the Department.

Any applicant or any person with an interest which is or may be adversely affected who has participated in the application process as an objector, and who is aggrieved by the decision of the Department, or if the Department fails to act within the time limits specified in this act, shall have the right to appeal as provided by Section 53 of this act.[2]

§ 745.16 *Determination of probable hydrologic consequences — Statement of results of test borings or core samplings*

If the Department finds that the probable total annual production at all locations of any coal surface mining operator will not exceed one hundred thousand (100,000) tons, the determination of probable hydrologic consequences required by law and the statement of the result of test borings or core samplings required by law shall, upon the written request of the operator, be performed by a qualified public or private laboratory designated by the Department and the cost of the preparation of such determination and statement shall be assumed by the Department.

§ 745.17 *Copy of application to be filed with county recorder or appropriate public office — Liability insurance — Blasting plans*

A. Each applicant for a surface coal mining and reclamation permit shall file a copy of his application for public inspection with the recorder at the courthouse of the county or an appropriate public office approved by the Department where the mining is proposed to occur, except for that information pertaining to the coal seam itself.

B. Each applicant for a permit shall be required to submit to the Department as part of the permit application a certificate issued by an insurance company authorized to do business in the United States certifying that the applicant has a public liability insurance policy in force for the surface mining and reclamation operations for which such permit is sought, or evidence that the applicant has satisfied other state or federal self-insurance requirements. Such policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of surface coal mining and reclamation operations including use of explosives and entitled to compensation under the applicable provisions of state law. Such policy shall be maintained in full force and effect

during the terms of the permit or any renewal, including the length of all reclamation operations.

C. Each applicant for a surface coal mining and reclamation permit shall submit to the Department as part of the permit application a blasting plan which shall outline the procedures and standards by which the operator will meet the provisions of law.

§ 745.18 *Impoundments of water on mining sites*

The operator may create, if authorized in the approved mining and reclamation plan and permit, permanent impoundments of water on mining sites as part of reclamation activities only when it is adequately demonstrated that:

1. The size of the impoundment is adequate for its intended purposes;

2. The impoundment dam construction will be so designed as to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under Public Law 83-566 (16 U.S.C. 1006);

3. The quality of impounded water will be suitable on a permanent basis for its intended use and that discharges from the impoundment will not degrade the water quality below water quality standards established pursuant to applicable federal and state law in the receiving stream;

4. The level of water will be reasonably stable;

5. Final grading will provide adequate safety and access for proposed water users; and

6. Such water impoundments will not result in the diminution of the quality or quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational or domestic uses.

§ 745.19 *Augering operations*

The operator shall conduct any augering operation associated with surface mining in a manner to maximize recoverability of coal and other mineral reserves remaining after the operation and reclamation are complete, and seal all auger holes with an impervious and noncombustible material in order to prevent drainage except where the De-

partment determines that the resulting impoundment of water in such auger holes may create a hazard to the environment or the public health or safety. The Department may prohibit augering if necessary to maximize the utilization recoverability or conservation of the solid fuel resources or to protect against adverse water quality impacts.

§ 745.20 *Disposal of wastes*

The operator shall, with respect to surface disposal of mine wastes, tailings, coal processing wastes, and other wastes in areas other than the mine working or excavations, stabilize all waste piles in designated areas through construction in compacted layers including the use of incombustible and impervious materials if necessary. He shall also assure that the final contour of the waste pile will be compatible with natural surroundings and that the site can and will be stabilized and revegetated according to the provisions of this act.

§ 745.21 *Surface mining near active and abandoned underground mines*

The operator shall refrain from surface coal mining within five hundred (500) feet from active and abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners. The Department shall permit an operator to mine near, through or partially through an abandoned underground mine or closer to an active underground mine if the nature, timing and sequencing of the approximate coincidence of specific surface mine activities with specific underground mine activities will result in improved resource recovery, improved land use category abatement of water pollution, or elimination of hazards to the health and safety of underground miners and the public.

§ 745.22 *Reclamation efforts — Variances*

The operator shall insure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface coal mining

operations. Where the applicant proposes to combine surface mining operations with underground mining operations to assure maximum practical recovery of the coal and other mineral ressources, the Department may grant a variance for specific areas within the reclamation plan from the requirement that reclamation efforts proceed as contemporaneously as practicable to permit underground mining operations prior to reclamation:

1. If the Department finds in writing that:
   a. the applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining operations,
   b. the proposed underground mining operations are necessary or desirable to assure maximum practical recovery of the coal and other mineral resources and will avoid multiple disturbance of the surface,
   c. the applicant has satisfactorily demonstrated that the plan for the underground mining operations conforms to requirements for underground mining in the jurisdiction and that permits necessary for the underground mining operations have been issued,
   d. the areas proposed for the variance have been shown by the applicant to be necessary for the implementing of the proposed underground mining operations,
   e. no substantial adverse environmental damage, either on-site or off-site, will result from the delay in completion of reclamation as required by this act, and
   f. provisions for the off-site storage of spoil will comply with the requirements of this act;

2. If the United States Secretary of the Interior has promulgated specific regulations to govern the granting of such variances in accordance with the provisions of federal law, and has imposed such additional requirements as he deems necessary;

3. If variances granted under the provisions of this section are to be reviewed by the Department not more than three (3) years from the date of issuance of the permit; and

4. If liability under the bond filed by the applicant with the Department shall be for the duration of the underground mining operations and until the requirements of this act have been fully complied with.

§ 754. *Reestablishment of native flora — Lenth of liability*

A. The operator shall establish on the regraded areas and all other lands affected a diverse, effective and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area; except, that introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan.

B. The operator shall assume the responsibility for successful revegetation for a period of five (5) full years after the last year of augmented seeding, fertilizing, irrigation or other work in order to assure compliance with this section. In those areas or regions of Oklahoma, where the annual average precipitation is twenty-six (26) inches or less as determined by the most recent National Oceanic and Atmospheric Administration Annual Summary of Climatological Data for Oklahoma, the operator's assumption of responsibility and liability will extend for a period of ten (10) full years after the last year of augmented seeding, fertilizing, irrigation or other work. When the Department approves a long-term intensive agricultural postmining land use, the applicable five- or ten-year period of responsibility for revegetation shall commence at the date of initial planting for such long-term intensive agricultural postmining land use. When the Department issues a written finding approving a long-term, intensive, agricultural postmining land use as part of the mining and reclamation plan, the

Department may grant exception to the provisions of subsection A of this section.

§ 754.1 *Spoil material — Placement*

The operator shall place all excess spoil material resulting from coal surface mining and reclamation activities in such a manner that:

1. Spoil is transported and placed in a controlled manner in position for concurrent compaction and in such a way to assure mass stability and to prevent mass movement;

2. The areas of disposal are within the bonded permit areas and all organic matter shall be removed immediately prior to spoil placement;

3. Appropriate surface and internal drainage systems and diversion ditches are used so as to prevent spoil erosion and movement;

4. The disposal area does not contain springs, natural water courses or wet weather seeps unless lateral drains are constructed from the wet areas to the main underdrains in such a manner that filtration of the water into the spoil pile will be prevented;

5. If placed on a slope, the spoil is placed upon the most moderate slope among those upon which, in the judgment of the Department, the spoil could be placed in compliance with all the requirements of this act, and shall be placed, where possible, upon, or above, a natural terrace, bench, or berm, if such placement provides additional stability and prevents mass movement;

6. Where the toe of the spoil rests on a downslope, a rock toe buttress, of sufficient size to prevent mass movement, is constructed;

7. The final configuration is compatible with the natural drainage pattern and surroundings and suitable for intended uses;

8. Design of the spoil disposal area is certified by a qualified registered professional engineer in conformance with professional standards; and

9. All other provisions of this act are met.

§ 754.2 *Performance standards*

The operator shall also fulfill the following performance standards:

1. Conduct surface coal mining operations so as to maximize the utilization and conservation of the solid fuel resource being recovered so that reaffecting the land in the future through surface coal mining can be minimized;

2. Stabilize and protect all surface areas including spoil piles affected by the surface coal mining and reclamation operation to effectively control erosion and attendant air and water pollution;

3. Restore the topsoil or the best available subsoil which is best able to support vegetation;

4. Insure that all debris, acid-forming materials, toxic materials, or materials constituting a fire hazard are treated or buried and compacted or otherwise disposed of in a manner designed to prevent contamination of ground or surface waters and that contingency plans are developed to prevent sustained combustion;

5. Insure that the construction, maintenance and postmining conditions of access roads into and across the site of operations will control or prevent erosion and siltation, pollution of water, damage to fish or wildlife or their habitat, or public or private property;

6. Refrain from the construction of roads or other access ways up a stream bed or drainage channel or in such proximity to such channel so as to seriously alter the normal flow of water;

7. Protect off-site areas from slides or damage occurring during the surface coal mining and reclamation operations, and not deposit spoil material or locate any part of the operations or waste accumulations outside the permit area;

8. To the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values, and achieve enhancement of such resources where practicable;

9. Provide for an undisturbed natural barrier beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for such distance as the Department shall determine shall be retained in place as a barrier to slides and erosion; and

10. Meet such other criteria as are necessary to achieve reclamation in accordance with the purposes of this act, taking into consideration the physical, climatological, and other characteristics of the site.

§ 755. *Steep slope surface mining—Performance standards—Exemptions*

§ 756. *Performance standards for removal of entire coal seam—Postmining land use as condition for granting permit*

A. Where a surface coal mining operation will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge or hill by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining and which will be capable of supporting postmining uses in accordance with the requirements of this section, such operation shall require that:

1. The toe of the lowest coal seam and the overburden associated with it are retained in place as a barrier to slides and erosion;

2. The reclaimed area is stable;

3. The resulting plateau or rolling contour drains inward from the outslopes except at specified points;

4. No damage will be done to natural watercourses;

5. Spoil will be placed on the mountaintop bench as is necessary to achieve the planned postmining land use; and

6. Stability of the spoil retained on the mountaintop is insured and meets the other requirements of this act.

Such operation shall not be required to restore the original contour as provided in Section 747 of this title.

B. In cases where an industrial, commercial, agricultural, residental or public facility, including recreational facilities, use is proposed as the postmining use of the affected land, the Department may grant a permit for a surface mining operation of the nature described in this section if:

1. The proposed postmining land use is deemed to constitute an equal or better economic or public use of the affected land, as compared with premining use after consultation with the appropriate land use planning agencies;

2. The applicant presents specific plans for the proposed postmining land use and appropriate assurances that such use will be:

a. compatible with adjacent land uses,

b. obtainable according to data regarding expected need and market,

c. assured of investment in necessary public facilities,

d. supported by commitments from public agencies where appropriate,

e. practicable with respect to private financial capability for completion of the proposed use,

f. planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the postmining land use, and

g. designed by a registered engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site;

3. The proposed use would be consistent with adjacent land uses, and existing state and local land use plans and programs;

4. The Department provides the governing body of the unit of general-purpose government in which the land is located and any state or federal agency which the Department, in its discretion, determines to have an interest in the proposed use, an opportunity of not more than sixty (60) days to review and comment on the proposed use;

5. All other requirements of this act will be met.

§§ 758, 759. *Repealed by Laws 1979, c. 249, § 60, emerg. eff. June 1, 1979*

§ 760.1 *Suspension of underground mining in certain areas*

In order to protect the stability of the land, the Department shall suspend underground coal mining under urbanized areas, cities, towns and communities and adjacent to industrial or commercial buildings, major impoundments or permanent streams if it finds imminent danger to inhabitants of the urbanized areas, cities, towns and communities.

§ 760.2 *Application of act to surface operations—Modifications*

The provisions of this act relating to permits, bonds, inspections and enforcement, public review, and administrative and judicial review shall be applicable to surface operations and surface impacts incident to an underground coal mine with such modifications to the permit application requirements, permit approval or denial procedures, and bond requirements as are necessary to accommodate the distinct difference between surface and underground coal mining. The Department shall adopt such modifications.

§ 762. *Repealed by Laws 1979, c. 249, § 60, emerg. eff. June 1, 1979*

§§ 763, 764. *Renumbered as §§ 791, 792 of this title by Laws 1979, c. 249, § 59, emerg. eff. June 1, 1979*

§ 765. *Data collection and analysis*

A. The Department shall require any permittee to establish and maintain appropriate records, make monthly reports to the Department, install, use and maintain any necessary monitoring equipment or methods, evaluate results in accordance with such methods, at such locations, intervals and in such manner as the Department shall prescribe, and provide such other information relative to surface coal mining and reclamation operations as the Department deems reasonable and necessary.

B. For those surface coal mining and reclamation operations which remove or disturb strata that serve as aquifers which significantly insure the hydologic balance of water use either on or off the mining site, the Department shall specify:

1. Monitoring sites to record the quantity and quality of surface drainage above and below the minesite as well as in the potential zone of influence;

2. Monitoring sites to record level, amount and samples of ground water and aquifers potentially affected by the mining and also directly below the lowermost (deepest) coal seam to be mined;

3. Records of well logs and borehole data to be maintained; and

4. Monitoring sites to record precipitation.

The monitoring data collection and analysis required by this section shall be conducted according to standards and procedures set forth by the Department in order to assure their reliability and validity.

§ 766. *Right of entry—Inspections—Signs—Violations—Public inspection of records, etc.*

A. The representatives of the Department may enter upon the lands of the operator at all times deemed reasonable and necessary by the Department without advance notice and upon presentation of appropriate credentials for the purpose of inspection, to determine whether the provisions of this act have been complied with, and may at reasonable times, and without delay, have access to and copy any records, inspect any monitoring equipment or method of operations required under this act.

B. The inspections by the Department shall:

1. Occur on an irregular basis averaging not less than one partial inspection per month and one complete inspection per calendar quarter for the surface coal mining and reclamation operation covered by each permit;

2. Occur without prior notice to the permittee or his agents or employees except for necessary on-site meetings with the permittee; and

3. Include the filing of inspection reports adequate to enforce the requirements of and to carry out the terms and purposes of this act.

C. Each permittee shall maintain in a conspicuous place at the entrances to the surface coal mining and reclamation operations clearly visible signs which set forth the name, business address and phone number of the permittee and the permit number of the surface coal mining and reclamation operations.

D. Each inspector, upon detection of each violation of any requirement of this act, shall immediately inform the operator in writing of the violation, and shall report in writing any such violation to the Department.

E. Copies of any records, reports, inspection materials or information obtained under this act by the Department shall be made immediately available for inspection by the public at central and sufficient locations designated by the Department in the county, multicounty and state area of mining so that they are conveniently available to residents in the areas of mining, excepting such information required to be kept confidential by this act.

§ 767. *Conflicts of interest—Violations*

No employee of the Department of Mines or any other state employee performing any function or duty under this act shall be directly or indirectly interested in any mining operation, or any contract for purchase of any property or construction or any work for any mining operation. Any person who knowingly violates the provision of this section shall be guilty of a misdemeanor and, upon conviction, shall be punished by incarceration for a period not to exceed one (1) year or a fine not to exceed Five Thousand Dollars ($5,000.00), or both.

§ 768. *Reports of violations of act—Informal review—Inspection procedure*

A. Any person who is or may be adversely affected by a surface mining operation may notify the Chief Mine Inspector or any representative of the Chief Mine Inspector

responsible for conducting the inspection, in writing, of any violation of this act which he has reason to believe exists at the surface mining site. The Chief Mine Inspector shall, by regulation, establish procedures for informal review of any refusal by a representative of the Chief Mine Inspector to issue a citation with respect to any such alleged violation. The Chief Mine Inspector shall furnish such persons requesting the review a written statement of the reasons for the Chief Mine Inspector's final disposition of the case.

B. The Chief Mine Inspector shall also, by regulation, establish procedures to insure that adequate and complete inspections are made. Any such person may notify the Chief Mine Inspector of any failure to make such inspections, after which the Chief Mine Inspector shall determine whether adequate and complete inspections have been made. The Chief Mine Inspector shall furnish such persons a written statement of the reasons for the Chief Mine Inspector's determination that adequate and complete inspections have or have not been conducted.

§ 769. *Civil penalties*

A. In the enforcement of a state program pursuant to this act any operator who violates any permit condition or who violates any other provision of this act may be assessed a civil penalty by the Department except that if such violation leads to the issuance of a cessation order under this act, the civil penalty shall be assessed. Such penalty shall not exceed Five Thousand Dollars ($5,000.00) for each violation. Each day of continuing violation may be deemed a separate violation for purposes of penalty assessments. In determining the amount of the penalty, consideration shall be given to the operator's history of previous violations at the particular surface coal mining operation; the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public; whether the permittee was negligent; and the demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notification of the violation.

B. A civil penalty shall be assessed by the Department only after the person charged with a violation described under subsection A of this section has been given an opportunity for a public hearing. Where such a public hearing has been held, the Chief Mine Inspector shall make findings of fact, and he shall issue a written decision as to the occurrence of the violation and the amount of the penalty which is warranted, incorporating, when appropriate, an order therein requiring that the penalty be paid. When appropriate, the Chief Mine Inspector shall consolidate such hearings with other proceedings under this act. Any hearing under this section shall be of record. Where the person charged with such a violation fails to avail himself of the opportunity for a public hearing, a civil penalty shall be assessed by the Chief Mine Inspector after the Chief Mine Inspector has determined that a violation did occur, and the amount of the penalty which is warranted, and has issued an order requiring that the penalty be paid.

C. Upon the issuance of a notice or order charging that a violation of this act has occurred, the Department shall inform the operator within thirty (30) days of the proposed amount of said penalty. The person charged with the penalty shall then have thirty (30) days to pay the proposed penalty in full or, if the person wishes to contest either the amount of the penalty or the fact of the violation, forward the proposed amount to the Department for placement in an escrow account. If through administrative or judicial review of the proposed penalty, it is determined that no violation occurred, or that the amount of the penalty should be reduced, the Department shall within thirty (30) days remit the appropriate amount to the person, with interest at the rate of six percent (6%), or at the prevailing United States Department of the Treasury rate, whichever is greater. Failure to forward the money to the Department within thirty (30) days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

D. Civil penalties owed under this act may be recovered in a civil action brought by the Attorney General at

the request of the Chief Mine Inspector in any appropriate district court.

E. Any person who willfully and knowingly violates a condition of a permit issued pursuant to this act or fails or refuses to comply with any order issued under this act, or any order incorporated in a final decision issued by the Chief Mine Inspector under this act except an order incorporated in a decision issued under subsection B of this section, shall, upon conviction, be punished by a fine of not more than Ten Thousand Dollars ($10,000.00) or by imprisonment for not more than one (1) year, or both.

F. Whenever a corporate permittee violates a condition of a permit issued pursuant to this act or fails or refuses to comply with any order issued under this act, or any order incorporated in a final decision issued by the Chief Mine Inspector under this act except an order incorporated in a decision issued under subsection B of this section, any director, officer or agent of such corporation who willfully and knowingly authorized, ordered or carried out such violation, failure or refusal shall be subject to the same civil penalties, fines and imprisonment that may be imposed upon a person under subsections A and E of this section.

G. Whoever knowingly makes any false statement, representation or certification, or knowingly fails to make any statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this act or any order of decision issued by the Department under this act, shall, upon conviction, be punished by a fine of not more than Ten Thousand Dollars ($10,000.00) or by imprisonment for not more than one (1) year, or both.

H. Any operator who fails to correct a violation for which a citation has been issued within the period permitted for its correction shall be assessed a civil penalty of not less than Seven Hundred Fifty Dollars ($750.00) for each day during which such failure or violation continues.

The period permitted for corrections of violations shall not end until:

1. The entry of a final order by the Department after an expedited hearing, as provided by Section 53 of this act,[1] which ordered the suspension of the abatement requirements of the citation because it was determined that the operator will suffer irreparable loss or damage from the application of the abatement requirements; or

2. The entry of an order by a court in any review proceedings initiated by the operator in which the court orders the suspension of the abatement requirements.

I. Any person who shall, except as permitted by law, willfully resist, prevent, impede or interfere with the Chief Mine Inspector or any of the agents or employees of the Department in the performance of duties pursuant to this act shall, upon conviction, be punished by a fine of not more than Five Thousand Dollars ($5,000.00), or by imprisonment for not more than one (1) year, or both.

§ 770. *Release of performance bond or deposit—Application*

The permittee may file a request with the Department for the release of all or part of a performance bond or deposit. Within thirty (30) days after any application for bond or deposit release has been filed with the Department, the operator shall submit a copy of an advertisement placed at least once a week for four (4) successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. Such advertisement shall be considered part of any bond release application and shall contain a notification of the precise location of the land affected, the number of acres, the permit and the date approved, the amount of the bond filed and the portion sought to be released, and the type and appropriate dates of reclamation work performed and a description of the results achieved as they relate to the operator's approved reclamation plan. In addition, as part of any bond release application, the applicant shall submit copies of letters which he has sent to adjoining property owners, local governmental bodies, planning agencies and sewage and water treatment authorities or water districts in the districts in which the

suface coal mining and reclamation activities took place, notifying them of his intention to seek release from the bond.

§ 771. *Release of performance bond or deposit—Inspection and evaluation of reclamation work*

Upon receipt of the notification and request, the Department shall within thirty (30) days conduct an inspection and evaluation of the reclamation work involved. Such evaluation shall consider, among other things, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance or future occurrence of such pollution, and the estimated cost of abating such pollution. The Department shall notify the permittee in writing of its decision to release or not to release all or part of the performance bond or deposit within sixty (60) days from the filing of the request, if no public hearing is held and if there has been a public hearing held within thirty (30) days thereafter.

§ 772. *Release of performance bond or deposit—Schedule of releases—Disapproval of application—Protection of affected area*

A. The Department may release in whole or in part the bond or deposit if the Department is satisfied the reclamation covered by the bond or deposit or portion thereof has been accomplished as required by this act according to the following schedule:

1. When the operator completes the backfilling, regrading and drainage control of a bonded area in accordance with his approved reclamation plan, the release of sixty percent (60%) of the bond or collateral for the applicable permit area;

2. After revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan. When determining the amount of bond to be released after successful revegetation has been established, the Department shall retain that amount of bond for the re-

vegetated area which would be sufficient for a third party to cover the cost of reestablishing revegetation and for the period specified for operator responsibility of reestablishing revegetation. No part of the bond or deposit shall be released under this paragraph so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by law. No part of the bond shall be released until soil productivity for prime farmlands has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey. When a silt dam is to be retained as a permanent impoundment, the remaining portion of bond may be released under this paragraph so long as provisions for sound future maintenance by the operator or the landowner have been made with the Department; and

3. When the operator has completed successfully all surface coal mining and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the period specified for operator responsibility. No bond shall be fully released until all reclamation requirements of this act are fully met.

B. If the Department disapproves the application for release of the bond or portion thereof, the Department shall notify the permittee in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure said release and allowing opportunity for a public hearing.

C. In order to protect areas affected by surface coal mining activities and the surface effects of underground coal mines, no oil or gas drilling activities shall be commenced or continued in any mine permit area while the reclamation bond or any portion thereof remains in effect, without the written approval of the Director.

The Department shall issue rules and regulations establishing criteria and conditions for the approval of the Director under this subsection.

§ 773. *Release of performance bond or deposit—Notice to municipalities—Objections—Hearings—Informal conference—Authority of department*

A. When any application for total or partial bond re lease is filed with the Department, the Department shall notify any municipality in which a surface coal mining operation is located by certified mail at least thirty (30) days prior to the release of all or a portion of the bond.

B. Any person with a valid legal interest which might be adversely affected by release of the bond or the responsible administration officer of any federal, state or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social or economic impact involved in the operation, or is authorized to develop and enforce environmental standards with respect to such operations, shall have the right to file written objections to the proposed release from bond to the Department within thirty (30) days after the last publication of the above notice. If written objections are filed and a hearing requested, the Department shall inform all the interested parties of the time and place of the hearing, and hold a public hearing in the locality of the surface coal mining operation proposed for bond release within thirty (30) days of the request for such hearing. The date, time and location of such public hearings shall be advertised as frequently as possible by the Department in each issue of a newspaper of general circulation in the locality for two (2) consecutive weeks, and shall hold a public hearing in the locality of the surface coal mining operation proposed for bond release or at the State Capitol Building at the option of the objector within thirty (30) days of the request for such hearing.

C. Without prejudice to the rights of the objectors, to the rights of applicant, or to the responsibilities of the Department pursuant to this section, the Department may establish an informal conference to resolve such written objections.

D. For the purpose of such hearing the Department shall have the authority, pursuant to the Administrative Procedures Act,[1] and is hereby empowered to administer oaths, subpoena witnesses, or written or printed materials, compel the attendance of witnesses, or production of the materials, and take evidence including but not limited to inspections of the land affected and other surface coal mining operations carried on by the applicant in the general vicinty. A verbatim record of each public hearing required by this act shall be made, and a transcript made available on the motion of any party or by order of the Department.

§ 774. *Civil actions to compel compliance with act—Exceptions*

A. Except as provided in subsection B of this section, any person having an interest which is or may be adversely affected may commence a civil action on his own behalf to compel compliance with this act:

1. Against any governmental instrumentality or agency to the extent permitted by the Eleventh Amendment to the Constitution of the United States which is alleged to be in violation of the provisions of this act or of any rule, regulation, order or permit issued pursuant thereto, or against any other person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to this act; or

2. Against the Department to the extent permitted by the Eleventh Amendment to the Constitution of the United States where there is alleged a failure of the Department to perform any act or duty under this act which is not discretionary with the Department.

B. No action may be commenced:

1. Under paragraph 1 of subsection A of this section:
   a. prior to sixty (60) days after the plaintiff has given notice in writing of the violation to the Department, and to any alleged violator, or
   b. If the Department has commenced and is diligently prosecuting a civil action in a court of this

state to require compliance with the provisions of this act, or any rule, regulation, order or permit issued pursuant to this act, but in any such action in a court of this state any person may intervene as a matter of right; or

2. Under paragraph 2 of subsection A of this section prior to sixty (60) days after the plaintiff has given notice in writing of such action to the Department, in such manner as the Department shall by regulation prescribe, except that such action may be brought immediately after such notification in the case where the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

C. Any action respecting a violation of this act or the regulations thereunder may be brought only pursuant to the Administrative Procedures Act[1] and only in the judicial district in which the surface coal mining operation complained of is located.

In such action under this section, the Department, if not a party, may intervene as a matter of right.

D. The court, in issuing any final order in any action brought pursuant to subsection A of this section, may award costs of litigation, including attorney and expert witness fees, to any party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security.

E. Nothing in this section shall restrict any right which any person, or class of persons, may have under any statute or common law to seek enforcement of any of the provisions of this act and the regulations thereunder, or to seek any other relief including relief against the Department.

F. Any person who is injured in his person or property through the violation by any operator of any rule, regulation, order or permit issued pursuant to this act may bring an action for damages, including reasonable attorney and expert witness fees, only in the judicial district in

which the surface coal mining operation complained of is located. Nothing in this subsection shall affect the rights established by or limits imposed under Oklahoma Workers' Compensation laws.

§ 775. *Inspection of violations*

Whenever the Department has reason to believe that any person is in violation of any requirement of this act or any permit condition required by this act, the Department shall immediately order inspection of the surface coal mining operation at which the alleged violation is occurring unless the information available to the Department is a result of a previous inspection of such surface coal mining operation. When the inspection results from information provided to the Department by any person, the Department shall notify such person when the inspection is proposed to be carried out and such person shall be allowed to accompany the inspector during the inspection.

§ 776. *Conditions or practices in violation of act—Cessation order—Additional obligations on operator*

If, on the basis of any inspection, the Department determines that any unacceptable condition or practice exists, or that any permittee is in violation of any requirement of this act or any permit condition required by this act, which condition, practice or violation also creates an imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources, the Department shall immediately order a cessation of surface coal mining and reclamation operations or the portion thereof relevant to the condition, practice or violation. Such cessation order shall remain in effect until the Department determines that the condition, practice or violation has been abated, or until modified, vacated or terminated by the Department. If the Department finds that the ordered cessation of surface coal mining and reclamation operations, or any portion thereof, will not completely abate the imminent

danger to the health or safety of the public or the significant imminent environmental harm to land, air or water resources, the Department shall, in addition to the cessation order, impose affirmative obligations on the operator requiring him to take whatever steps the Department deems necessary to abate the imminent danger or the significant environmental harm.

§ 777. *Abatement of violation—Notice—Hearing—Cessation orders*

If the Department determines that any permittee is in violation of any requirement of this act or any permit condition required by this act, but such violation does not create an imminent danger to the health or safety of the public, or cannot be reasonably expected to cause significant, imminent environmental harm to land, air or water resources, the Department shall issue a notice to the permittee or his agent fixing a reasonable time not to exceed ninety (90) days for the abatement of the violation and providing opportunity for public hearing.

If, upon expiration of the period of time as originally fixed or subsequently extended, for good cause shown and upon the written finding of the Department, the Department finds that the violation has not been abated, it shall immediately order a cessation of surface coal mining and reclamation operations or the portion thereof relevant to the violation. Such cessation order shall remain in effect until the Department determines that the violation has been abated, or until modified, vacated or terminated by the Department. In the order of cessation issued by the Department under this section, the Department shall determine the steps necessary to abate the violation in the most expeditious manner possible, and shall include the necessary measures to abate in the order.

§ 778. *Suspension or revocation of permit*

If the Department determines that a pattern of violations of any requirements of this act exists or has existed,

and if the Department also finds that such violations are caused by the unwarranted or willful failure of the permittee to comply with any requirements of this act, the Department shall immediately issue an order to the permittee to show cause as to why the permit should not be suspended or revoked and shall provide opportunity for a public hearing. If a hearing is requested the Department shall inform all interested parties of the time and place of the hearing. Upon the permittee's failure to show cause as to why the permit should not be suspended or revoked, the Department shall immediately suspend or revoke the permit.

§ 779. *Notices and orders—Requirements*

Notices and orders issued pursuant to Sections 42 through 45 of this act[1], shall set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the surface coal mining and reclamation operation to which the notice or order applies. Each notice or order issued under this section shall be given promptly to the permittee or his agent by the Department and all such notices and orders shall be in writing and shall be signed. Any notice or order issued pursuant to this section may be modified, vacated or terminated by the Department. Any notice or order which requires cessation of mining by the operator shall expire within thirty (30) days of actual notice to the operator unless a public hearing is held at the site or within such reasonable proximity to the site that any viewings of the site can be conducted during the course of public hearing.

§ 780. *Action for damages and expenses—Injunctions, restraining orders or other orders—Jurisdiction—Relief*

A. The Attorney General, upon request of the Department, shall institute proceedings to recover any damages and expense which the Department may have sustained by reason of the default of the operator. Such proceedings

shall be brought against the operator and surety either in Oklahoma County or the county in which the violation occurred.

The Department may request the Attorney General to institute a civil action for relief, including a permanent or temporary injunction, restraining order or any other appropriate order in the district court for the district in which the surface coal mining and reclamation operation is located or in which the permittee thereof has his principal office, whenever such permittee or his agent:

1. Violates or fails or refuses to comply with any order or decision issued by the Department under this act;

2. Interferes with, hinders or delays the Department in carrying out the provisions of this act;

3. Refuses to admit authorized representatives of the Department to the mine;

4. Refuses to permit inspection of the mine by authorized representatives of the Department;

5. Refuses to furnish any information or report requested by the Department in furtherance of the provisions of this act; or

6. Refuses to permit access to, and copying of, such records as the Department determines necessary in carrying out the provisions of this act.

B. The court shall have jurisdiction to provide such relief as may be appropriate. Any relief granted by the court to enforce an order under paragraph 1 of this section shall continue in effect until the completion or final termination of all proceedings for review of such order under this title, unless the district court granting such relief sets it aside or modifies it.

§ 781. *Land unsuitable for certain types of surface coal mining operations—Designation—Criteria*

A. The Department shall establish a planning process enabling objective decisions based upon competent and scientifically sound data and information as to which, if any,

land areas of this state are unsuitable for all or certain types of surface coal mining operations pursuant to the standards set forth in this section but such designation shall not prevent the mineral exploration pursuant to this act of any area so designated.

B. Upon petition, the Department shall designate an area as unsuitable for all or certain types of surface coal mining operations if the Department determines that reclamation pursuant to the requirements of this act is not technologically and economically feasible.

C. Upon petition, a surface area may be designated unsuitable for certain types of surface coal mining operations if such operations will:

1. Be incompatible with existing state or local land use plans or programs;

2. Affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific and esthetic values and natural systems;

3. Affect renewable resource lands in which such operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products, and such lands to include aquifers and aquifer recharge areas; or

4. Affect natural hazard lands in which such operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.

D. Determinations of the unsuitability of land for surface coal mining, as provided for in this section, shall be integrated as closely as possible with present and future land use planning and regulation processes at the federal, state and local levels.

E. The requirements of this section shall not apply to lands on which surface coal mining operations were being conducted on August 3, 1977, or under a permit issued pursuant to this act or the Coal Reclamation Act of 1978,[1] or

where substantial legal and financial commitments in such operation were in existence prior to January 4, 1977.

§ 782. *Petition to designate area as unsuitable for surface coal mining operations—Hearing—Decision—Impact statement*

A. Any person having an interest which is or may be adversely affected shall have the right to petition the Department to have an area designated as unsuitable for surface coal mining operations or to have such a designation terminated. Such a petition shall contain allegations of facts with supporting evidence which would tend to establish the allegations. Within ten (10) months after receipt of the petition the Department shall hold a public hearing in the locality of the affected area, after appropriate notice and publication of the date, time and location of such hearing. After a person having an interest which is or may be adversely affected has filed a petition and before the hearing, as required by this section, any person may intervene by filing allegations of facts with supporting evidence which would tend to establish the allegations. Within sixty (60) days after such hearing, the Department shall issue and furnish to the petitioner and any other party to the hearing, a written decision regarding the petition, and the reasons therefor. In the event that all the petitioners stipulate agreement prior to the requested hearing, and withdraw their request, such hearing need not be held.

B. Prior to designating any land areas as unsuitable for surface coal mining operations, the Department shall prepare a detailed statement on the potential coal resources of the area, the demand for coal resources, and the impact of such designation on the environment, the economy and the supply of coal.

§ 783. *Limitations on surface coal mining operations*

After August 3, 1977, and subject to valid existing rights, no surface coal mining operations except those which existed on August 3, 1977, shall be permitted:

1. Within one hundred (100) feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join such right-of-way line and except that the Department may permit such roads to be relocated or the area affected to lie within one hundred (100) feet of such road, if after public notice and opportunity for public hearing in the locality a written finding is made that the interests of the public and the landowners affected thereby will be protected.

2. Within three hundred (300) feet from any occupied dwelling, unless waived by the owner thereof, nor within three hundred (300) feet of any public building, school, church, community or institutional building, public park, or within one hundred (100) feet of a cemetery;

3. Within twenty-five (25) feet plus one and one-half (1½) times the depth of the surface cut from the property line of an adjacent property owner, if the surface cut removes and does not replace lateral support, unless there is written agreement between the operator and the adjacent property owner; or

4. On any land prohibited by federal law.

§ 784. *Cooperative agreements with federal government*

The Department shall have the authority to enter into cooperative agreements with the United States Secretary of the Interior to provide for departmental regulation of surface coal mining and reclamation operations on federal lands within Oklahoma.

§ 785. *Compliance with act*

Every agency, unit, or instrumentality of federal, state or local government, including any publicly owned utility or publicly owned corporation of federal, state, or local government, which proposes to engage in surface coal mining operations which are subject to the requirements of this act shall comply with the provisions of this act.

§ 786. *Review of notices or order or modification, vacation or termination of notices or orders—Application—Investigation—Hearing—Temporary relief—Suspension or revocation of permit—Costs*

A. A permittee issued a notice or order by the Department pursuant to the provisions of this act or any person having an interest which is or may be adversely affected by such notice or order or by any modification, vacation or termination of such notice or order, may apply to the Chief Mine Inspector for review of the notice or order within thirty (30) days of receipt thereof or within thirty (30) days of its modification, vacation or termination. Upon receipt of such application, the Chief Mine Inspector shall cause such investigation to be made as it deems appropriate. Such investigation shall provide an opportunity for a public hearing, at the request of the applicant or the person having an interest which is or may be adversely affected, to enable the applicant or such person to present information relating to the issuance and continuance of such notice or order or the modification, vacation or termination thereof. The filing of an application for review under this subsection shall not operate as a stay of any order or notice.

The permittee and other interested persons shall be given written notice of the time and place of the hearing at least five (5) days prior thereto. Any such hearing shall be of record.

B. Upon receiving the report of such investigation, the Chief Mine Inspector shall make findings of fact, and shall issue a written decision, incorporating therein an order vacating, affirming, modifying or terminating the notice or order, or the modification, vacation or termination of such notice or order complained of and incorporate his findings therein. Where the application for review concerns an order for cessation of surface coal mining and reclamation operations issued pursuant to the provisions of this title, the Chief Mine Inspector shall issue the written decision within thirty (30) days of the receipt of the application for re-

view, unless temporary relief has been granted by the Chief Mine Inspector pursuant to this section or by the court.

C. Pending completion of the investigation and hearing required by this section, the applicant may file with the Chief Mine Inspector a written request that the Chief Mine Inspector grant temporary relief from any notice or order issued together with a detailed statement giving reasons for granting such relief. The Chief Mine Inspector shall issue an order or decision granting or denying such relief expeditiously. Where the applicant requests relief from an order for cessation of coal mining and reclamation operations, the order or decision on such a request shall be issued within five (5) days of its receipt. The Chief Mine Inspector may grant such relief, under such conditions as it may prescribe, if:

1. A hearing has been held in the locality of the permit area on the request for temporary relief in which all parties were given an opportunity to be heard;

2. The applicant shows that there is substantial likelihood that the findings of the Chief Mine Inspector will be favorable to him; and

3. Such relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air or water resources.

D. Following the issuance of an order to show cause as to why a permit should not be suspended or revoked, the Chief Mine Inspector shall hold a public hearing after giving written notice of the time, place and date. Any such hearing shall be of record. Within sixty (60) days following the public hearing, the Chief Mine Inspector shall issue and furnish to the permittee and all other parties to the hearing a written decision, and the reasons therefor, concerning suspension or revocation of the permit. If the Chief Mine Inspector revokes the permit, the permittee shall immediately cease surface coal mining operations on the permit area and shall complete reclamation within a period specified by the Chief Mine Inspector, or the Chief Mine

Inspector shall declare as forfeited the performance bonds for the operation.

E. Whenever an order is issued under this section, or as a result of any administrative proceeding under this act, at the request of any person, a sum equal to the aggregate amount of all costs and expenses, including attorney fees, as determined by the Chief Mine Inspector to have been reasonably incurred by such person for or in connection with his participation in such proceedings, including any judicial review of agency actions, may be assessed against either party as the court, resulting from judicial review or the Chief Mine Inspector, resulting from administrative proceedings, deems proper.

§ 787. *Appeal of order or other action*

Any order or other action of the Department or the Chief Mine Inspector shall be appealable when entered, as provided in Sections 318 et seq. of Title 75 of the Oklahoma Statutes.

§ 788. *Enforcement or protection of interest in water resources—Replacement of water supply*

A. Nothing in this act shall be construed as affecting in any way the right of any person to enforce or protect, under applicable law, his interest in water resources affected by a surface coal mining operation.

B. The operator of a surface coal mine shall replace the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial or other legitimate use from an underground or surface source where such supply has been affected by contamination, diminution or interruption proximately resulting from such surface coal mine operation.

§ 789. *Rules and regulations*

The Department shall adopt and promulgate all necessary rules and regulations including rules and regulations for hearings and appeals, subject to the provisions of this

act and the Administrative Procedures Act,[1] for the implementation of this act.

§ 790. *Unconstitutionality of Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87)*

If any provisions of this act are required by the Surface Mining Control and Reclamation Act of 1977[1] (P.L. 95-87) and any section, clause or phrase of that Act on which this act is based is declared unconstitutional or invalid by a court having jurisdiction over the State of Oklahoma, the Department may suspend the enforcement of that provision of this act for up to twelve (12) months, and shall immediately notify the President Pro Tempore of the Senate, and the Speaker of the House of Representatives.

§ 791. *Federal rules and regulations—Compliance—Reimbursement for costs*

In compliance with all federal laws, rules and regulations, the Department shall take any such action as it shall deem necessary to make such compliance. The Department shall make every effort to obtain full reimbursement from the Director of the Office of Surface Mining and Reclamation for the costs of performing its duties under this act.

§ 792. *Assistance of state agencies*

The Department is authorized to call upon the expertise of all state agencies in the implementation of this act. All state agencies shall provide any assistance as available on the request of the Department.

[Footnotes omitted in this printing]